(1)

FILED

No. 00-1033

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In The

Supreme Court of the United States

Cecile A. Lennix

v.

Kenneth S. Apfel, Commissioner of Social Security

On Petition for Writ of Certiorari
In The U.S. Court of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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Pro Se
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26 pp

Questions Presented for Review

1. May the judicial system of the State of Louisiana deny a claimant a day in court to defend himself?

2. May a claimant have the privilege to submit evidence to the court system that was not given to the A.L.J. Adrian Pedron when ordered in a court hearing on 12/09/1996 but never received?

3. Does a claimant have the opportunity to be examined by a Social Security disability physician for a work related lung injury before the courts make final decisions?

4. May an employer elect not to complete an accident report on an employee who is injured while at work but completed sheet as personal injury?

Parties to the Proceeding

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Table of Contents

Title	Page No.
Citation of Opinions and Orders in the Case	1
Basis for Jurisdiction	2
Constitutional Provision	3
Statement of the Case	4
Arguments	5,6,7
Listing of Appendix Items	8
Appendix Item 1	9-19
Appendix Item 2	20-21

Statute of the Case

Elliot L. Richardson v. Pedro Perales 402 US 389, 28 L Ed 2d 842, 91 S Ct 1420

Citation of Opinions and Orders in the Case

Complaint filed August 04, 1998. Civil action 98-2296 Sect. T Mag. 5

October 14, 1999 United States District Court Eastern District of Louisiana Civil Action No. 98-2296 Section "LLM"(1)

Notice of Appeal Civil Action No. 98-2296 Section "LLM"(1) on November 09, 1999

01/22/00 Additional Extension of Time Case #99-31244

01/24/00 Motion to Supplement Record on Appeal
United States Court of Appeals for the Fifth Circuit
No. 99-31244
USDC - 98-2296 Sec."LLM"(1)

Received 10/07/98 Motion for Extension of Time wrong name and case number
Earline Jackson for Leanna Jackson
Civil Action No. 98-2156 Section "C" (3)

Letter of April 11, 2000 from Attorney Cheryl Chapman, Office of the General Counsel

August 04, 2000 United States Court of Appeals for the Fifth Circuit No. 99-31244

Basis for Jurisdiction

The merits of the Social Security Disability claim have not been addressed in any lower court proceeding.

Constitutional Provision

The Constitution of the United States of America, Article XIV, which provides in pertinent part: "Nor shall any state deprive any person of life, liberty, or property without due process of law."

Statement of the Case

I would like to appeal the decision rendered by Circuit Judges Higginbotham, Duhe', and Wiener in case #99-31244.

On Sunday, June 27, 1993, while performing duties an an assistant operator at Big Three Industries, now Air Liquide of America, anhydrous ammonia, 95% or better purity, was inhaled by claimant Cecile A. Lennix. The required Supervision Investigation of Accident form was never signed and executed. Compensation was not paid or ordered by the court system of the State of Louisiana. Merits of the case were never addressed and considered.

Claimant asked to address compliance in reporting accidents, but received judgment relative to personal injury for compensation.

Claimant is asking this court to see if her records have been misfiled or overlooked because claimant feels that the accident of Sunday, June 27, 1993, has caused her mental and medical problems.

Argument

Merits of case not heard in lower courts, therefore need Federal relief.

On Sunday, June 27, 1993, claimant had an accident inhaling anhydrous ammonia, 95% pure or better.

Lionel Comeaux, supervision, filled out a Supervision Investigation of accident form, which he did not sign. Gave copy to claimant on fax paper. Information fades. Ex. A

Monday, June 28, 1993, claimant visited the company doctor, Christy Montegut, with a return visit on Wednesday, June 30,1993. Company denies knowledge of first visit on June 28, 1993. Ex. B

July 27 and July 30, 1993, Office visits to Dr. John Theile, Lung Specialist. Ex. C

July 30, 1993, received Dr. Montegut's office visits and Highland papers from Houston office. Supervision Investigation of Accident report ommited. Ex. D

Claimant continued to work with residual medical problems.

Merger of Big Three Industries and Air Liquide of America. Ex. E

Thursday, January 13, 1994, claimant walked into company control room, which had an unusual odor, compounded by Sup. Gaubert, who began to repeatedly flick a butane lighter. Reported incident to Plant Manager. Ex. F

January 15 and 16, 1994, claimant's family reported claimant's strange and unusual behavior to company doctor (Christy Montegut).

Monday, January 17, 1994, family received order of protective custody, and claimant was admitted to DePaul Psychiatric Hospital. Discharged on January 25, 1994. Ex. G

Claimant received 26 weeks pay from group policy through company. Ex. H

July 31, 1994 Air Liquide Insurance Company informed claimant of termination. Ex. I

September 1994 started treatment with Dr. Charles Chester. Ex. J

Claimant applied for C.O.B.R.A. and received checks from ITT Hartford, an individual policy held and paid for by claimant. Ex. K

September 11, 1995 appeal ITT Hartford decision. Ex. L

Letter dated September 08, 1995 received September 13, 1995 from Don Bobo, Human Resource. Ex. M

September 1995 started medical treatment at Louisiana Medical Center. Ex. N

1996 Started treatment with Dr. Robert Ellis, River Parish Mental Health.

Monday, December 09, 1996 hearing Judge Adrian Pedron (ALJ). Advocate Ison was given thirty (30) additional days to get medical records to Judge Pedron. I was not aware of what was sent to Judge Pedron by Advocate Ison. Claimant is submitting attending physician's Statement of Disability sheets from Dr. Christy Montegut. Received partial disability from Social Security. May 19, 1997 appealed decision. Ex. O

Complaint filed August 4, 1998. Civil Action 98-2296 Sect. T Mag. 5. Ex. P

February 4, 1998 certified letter #Z039176419 Mr. Patrick Verschelde. Ex. Q

Medical records of October 02, & 03, 2000. Ex. R

Affidavits of Kenneth Pelham and Ferrell Yarbrough. Ex. S

Claimant believes that just too long delayed is justice denied.

After doing all the leg work, paperwork, utilitizing the public library, and asking others for help, claimant is asking this court to please hear her case.

I hope, pray, and keep the faith that I would be rewarded with any and everything that is due me, including filing fees.

Appendix

United States District Court, Eastern District of Louisiana Cecile A. Lennix versus Kenneth S. Apfel, Commissioner of Social Security; Civil Action No. 98-2296, Section "LLM"(1) Dismissed with Prejudice

United States Court of Appeals for the Fifth Circuit, Cecile A. Lennix, Plaintiff-Appellant, versus Kenneth S. Apfel, Commissioner of Social Security, Defendant-Appellee. Appeal from the United States District Court for the Eastern District of Louisiana USDC No. 98-CV-2296-LLM, No. 99-31244, Summary Calendar. Affirmed

Item 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CECILE A. LENNIX	**CIVIL ACTION**
VERSUS	**NO. 98-2296**
KENNETH S. APFEL, COMMISSIONER OF SOCIAL SECURITY	**SECTION "LLM"(1)**

ORDER AND REASONS

Plaintiff Cecile A. Lennix seeks judicial review pursuant to Section *405(g)* of the Social Security Act (the "Act") of the final decision of the Commissioner of Social Security Administration (the "Commissioner"), which denied her claim for disability income benefits ("DIB") and supplemental security income benefits ("SSI") under Title II, §§ 216(I) and 223 of the Act, 42 U.S.C. §§ 416(I) and 423, and under Title XVI , §§ 16O2 and 1614(a)(3)(A) of the Act, 42 U.S.C. §1381(a).[1] Plaintiff and defendant filed timely cross-motions for summary judgment. Record Doc. Nos. 6, 7.

1. PROCEDURAL HISTORY

Lennix applied for DIB on June 20, 1994, alleging disability since January 13, 1994, because of stress and depression.[2] (Tr.34). The

[1] Plaintiff incorrectly cited "Part A of *Title XVIII* of the Social Security Act, as presently amended." (Tr.29). She is actually seeking disability income benefits ("DIB") under Title II and supplemental security income benefits ("SSI") under Title XVI.

[2] At the hearing before the AU, however, Lennix alleged she was also disabled due to diabetes, a respiratory impairment, and shoulder, heart and back pain. (Tr.315-334).

Commissioner denied her application initially and on reconsideration. (Tr.33-47, 55-70). Plaintiff requested a hearing before an administrative law judge ("ALJ"), which was held on December 9, 1996. The ALJ partially granted Lennix's application on March 21, 1997. (Tr. 14-17). He found that she was entitled to a period of disability insurance benefits commencing on January 13, 1994, under §§ 216(I) and 223 of the SSA. However, he found that pursuant to those same sections of the SSA, her entitlement to disability benefits ended on September 30, 1995, "the last day of the second month after the month of the disability cessation." (Tr. 17). After the Appeals Council denied review on June 11, 1998 (Tr. 5-6), the ALJ's decision became the final decision of the Commissioner for purposes of this Court's review.

2. STATEMENT OF ISSUES ON APPEAL

Plaintiff's request for judicial review raises the following issue: whether the Commissioner erred in concluding that she was no longer disabled.[3]

3. AU' S FINDINGS RELEVANT TO ISSUES ON APPEAL

The Commissioner made the following findings relevant to the issues on appeal:

A. The claimant has had a "severe" impairment or combination of impairments consisting of depression. Specifically, she was under a disability beginning with her alleged onset date and ending July 11, 1995. During that time, she suffered from a major depression that precluded her ability to perform even simple unskilled work.

B. She has no severe physical impairments. The record as a whole shows that her diabetes and respiratory impairments are well controlled by medications and that these impairments do not result in more than minimal limitations in

[3] Plaintiff is filing *pro se* in this matter.

her ability to perform basic work activities. See Stone v. Heckler, 752 F.2d 1099 (5th Cir. 1985).

C. As of July 11, 1995, claimant had a good mood and fairly normal sleep and appetite. Her Zoloft was decreased to 50 mg. On July 31, 1995, she had experienced even more of a decrease in her daytime sleepiness. Her mood, sleep, and appetite were within normal limits and she had no suicidal, assaultive or psychotic illness. She was to continue to take Zoloft at 50 mg. a day for the next six months. Dr. Chester, her treating physician, did not think she was disabled anymore. (Tr. 15, 231).

D. Claimant gave exaggerated testimony of symptoms and functional limitations for the period after the time she was actually disabled. Owing to medical improvement related to the ability to work, the claimant, since July 11, 1995, has regained a residual functional capacity consistent with at least an ability to perform her past relevant semi-skilled work as an assistant operator at an air separation plant.

4. ANALYSIS

A. Standards of Review

The function of this Court on judicial review is limited to determining whether there is substantial evidence in the record to support the final decision of the Commissioner as trier of fact and whether the Commissioner applied the appropriate legal standards in evaluating the evidence. Spellman v. Shalala, 1 F.3d 357, 360 (5th Cir. 1993); Villa v. Sullivan, 895 F.2d 1019, 1021 (5th Cir. 1990). Substantial evidence is more than a scintilla but less than a preponderance and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 401 (1971); Spellman, 1 F.3d at 360. This Court may not reweigh the evidence, try the issues de novo or substitute its judgment for the Commissioner's. Id.; Selders v. Sullivan, 914 F.2d 614, 617 (5th Cir. 1990).

The Commissioner is entitled to make any finding that is supported by substantial evidence, regardless whether other conclusions are also permissible. See Arkansas v. Oklahoma 503 U.S. 91 (1992). Despite this Court's limited function, it must scrutinize the record in its entirety to determine the reasonableness of the decision reached and whether substantial evidence exists to support it. Villa, 895 F.2d at 1022; Johnson v. Bowen, 864 F.2d 340, 343-44 (5th Cir. 1988). Any findings of fact by the Commissioner that are supported by substantial evidence are conclusive. Ripley v. Chater, 67 F.3d 552, 555 (5th Cir. 1995).

To be considered disabled and eligible for DIB, plaintiff must show that she is unable "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Commissioner has promulgated regulations that provide procedures for evaluating a claim and determining disability. 20 C.F.R. §§ 404.1501 to 404.1599 & Appendices, §§ 416.901 to 416.998 (1995). The regulations include a five-step evaluation process for determining whether an impairment prevents a person from engaging in any substantial gainful activity. ID. §§ 404.1520, 416.920; Greenspan v. Shalala, 38 F.3d 232, 236 (5th Cir. 1994); Moore v. Sullivan, 895 F.2d 1065, 1068 (5th Cir. 1990).[4] The five-step inquiry terminates if

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[4]The five-step analysis requires consideration of the following:

First, if the claimant is currently engaged in substantial gainful employment, he or she is found not disabled. 20 C.F.R. §§ 404.1520(b), 416.920(b).

Second, if it is determined that, although the claimant is not engaged in substantial employment, he or she has no severe mental or physical impairment which would limit the ability to perform basic work-related functions, the claimant is found not disabled. ID. §§ 404.1520(c), 416.920(c).

the Commissioner finds at any step that the claimant is or is not disabled. Leggett v. Chater, 67 F.3d 558, 564 (5th Cir. 1995).

The claimant has the burden of proof under the first four parts of the inquiry. Id. If she successfully carries this burden, the burden shifts to the Commissioner to show that other substantial gainful employment is available in the national economy, which the claimant is capable of performing. Greenspan, 38 F.3d at 236; Kraemer v. Sullivan, 885 F.2d 206, 208 (5th Cir. 1989). When the Commissioner shows that the claimant is capable of engaging in alternative employment, "the ultimate burden of persuasion shifts back to the claimant." Id.; accord Selders, 914 F.2d at 618.

The Court "weigh[s] four elements of proof when determining whether there is substantial evidence of

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Third, if an individual's impairment has lasted or can be expected to last for a continuous period of twelve months and is either included in a list of serious impairments in the regulations or is medically equivalent to a listed impairment, he or she is considered disabled without consideration of vocational evidence. Id. §§ 404.1520(d), 4 16.920(d).

Fourth, if a determination of disabled or not disabled cannot be made by these steps and the claimant has a severe impairment, the claimants residual functional capacity and its effect on the claimant's past relevant work are evaluated. If the impairment does not prohibit the claimant from returning to his or her former employment, the claimant is not disabled. Id. §§ 404.1520(e), 416.920(e).

Fifth, if it is determined that the claimant cannot return to his or her former employment, then the claimant's age, education and work experience are considered to see whether he or she can meet the physical and mental demands of a significant number of jobs in the national economy. If the claimant cannot meet the demands, he or she will be found disabled. Id. §§ 404.1520(f)(1), 416.920(f)(1). To assist the Commissioner at this stage, the regulations provide certain tables that reflect major functional and vocational patterns. When the findings made with respect to claimant's vocational factors and residual functional capacity coincide, the rules direct a determination of disabled or not disabled. Id. § 404, Subpt. P, App. 2, §§ 200.00-204.00, 416.969 (1994) ("Medical-Vocational Guidelines").

disability: (1) objective medical facts; (2) diagnoses and opinions of treating and examining physicians; (3) the claimant's subjective evidence of pain and disability; and (4) [her] age, education, and work history." Martinez v. Chater, 64 F.3d 172, 174 (5th Cir. 1995). "The Commissioner, rather than the courts, must resolve conflicts in the evidence." Id.

B. Factual Background

Plaintiff Cede A. Lennix and her daughter were the only witnesses testifying at the hearing on December 9, 1996, before the ALJ. (Tr. 315-355). It is clear from a review of the entire transcript that plaintiff was no longer basing her claim for disability on depression and stress, but mainly on respiratory problems she was experiencing. She alleged that the problems began after she "inhaled pure ammonia from a tank. A relieve valve went off on me and it was pure ammonia that got into my system." (Tr.319). This occurred on June 27, 1993. (See Plaintiff's Mem. in Support, p.1.) Since that time, she alleges that she suffers from exposure to any sort of chemical, including those in household cleaners like bleach, chlorine and aerosol spray, sulfur, dust and tobacco. She is taking medication for her "airways," called Proventil, an inhalant, which she has to use approximately twice a day. She stated that Proventil did relieve her condition, "because it relieves the water" and it takes the pain away from around her heart. (Tr.336). She described suffering from pain, mostly around her heart area, which she attributes to the buildup of fluids due to her inability to properly release moisture through her "airways." (Tr.320-329). She also testified that she is being treated for diabetes, for which she is taking pills, not insulin, and vaginitis, a recurring bacterial infection, at Charity Hospital. (Tr. 332-334).

C. Medical Evidence

This Court has reviewed the medical records in evidence and the ALJ's summary of the medical evidence (Tr. 19-21), and finds the ALJ's thorough summary of the evidence was

substantially correct and incorporates it herein by reference. In her Motion for Summary Judgment and Incorporated Statement of Material Facts, Lennix makes very little reference to her mental or psychological condition. She concentrates mainly on her physical symptoms, although she does mention her stay in DePaul Hospital in January of 1994; she also mentions that she was placed in an area with Alcoholic and Drug Dependency patients, "was very afraid and asked my daughter to bring my Prevential Inhaler pump." (Plaintiff's Mem. pp. 3-4). She also states that the accident on June 27, 1993 "has and is causing me physical and emotional stress " Id. p.6.

Lennix refers in her memorandum to having two liver tests performed. She claims she is diabetic and is receiving treatment for that as well as for her respiratory problems. (See Tr.264 showing abnormal liver profile results, dated 7/31/95; see also Plaintiff's Mem.pp.5-6 and Ex.I/1 attached [exhibit appears to be copy of same test taken on 7/31/95, with added notation "Dr. Charles Chester ordered this test. 7/31/95 - Return to work."]).

The ALJ found that the plaintiffs testimony of subjective complaints and functional limitations, including pain and severe breathing problems, were not supported by the evidence as a whole in the disabling degree alleged, and therefore lacked credibility. (Tr. *15).* He thoroughly reviewed the medical evidence presented at the hearing, along with additional medical evidence which he ordered submitted after the hearing. (Tr. 353).

Whether pain is disabling is an issue for the ALJ, who has the primary responsibility for resolving conflicts in the evidence. Carrier v. Sullivan, 944 F.2d 243, 247 (5th Cir. 1991). It is within the ALJ's discretion to determine the disabling nature of a claimant's pain, and the ALJ's determination is entitled to considerable deference. Wren v. Sullivan, 925 F.2d 123, 128 (5th Cir. 1991); James v. Bowen, 793 F.2d 702 (5th Cir. 1986). The determination whether an

applicant is able to work despite some pain is within the province of the administrative agency and should be upheld if supported by substantial evidence. Jones v. Heckler, 702 F.2d 616 (5th Cir. 1983); Epps v. Harris, 624 F.2d 1267 (5th Cir. 1980).

Subjective complaints must be corroborated by objective medical evidence. Houston v. Sullivan, 895 F.2d 1012, 1016 (5th Cir. 1989). When the medical signs or laboratory findings show that the claimant has medically determinable impairments that could reasonably be expected to produce the alleged symptoms, the Commissioner must evaluate the intensity and persistence of the symptoms, so that he can determine how the symptoms limit the claimant's capacity for work. 20 C.F.R. § 404.1529(c).

The Commissioner found, and his conclusion is substantially supported by the medical records, that although plaintiff testified she had crying spells daily, she also stated that she was handling them. (Tr. 17). Additionally, as noted above, he found that her testimony regarding symptoms and functional limitations since July 11, 1995, the date he found her disability had ended, was exaggerated. (Tr. 15). This Court finds there was substantial evidence in the record to support the ALJ's findings that Lennix's disability, as such is defined by the Act, ended on July 11, 1995.

Although the plaintiff did not specifically argue that her combined impairments prohibited her from performing any type of work, the Commissioner nevertheless properly considered plaintiff's combined impairments. An individual's combined impairments can prohibit substantial gainful activity. 20 C.F.R. §§ 404.1523, 416.923; Owens v. Heckler, 770 F.2d 1276, 1282 (5th Cir. 1985). It is well settled that "the Commissioner must analyze both the disabling effect of each of the claimant's ailments and the combined effect of all of these impairments." Fraga v. Bowen, 810 F.2d 1296, 1305 (5th Cir. 1987) (quotations omitted). However, an ALJ's finding that multiple impairments do not render a

plaintiff disabled will be upheld unless the Commissioner "so fragmentized [plaintiff's] several ailments" that he failed properly to evaluate their combined effect upon plaintiff. Id.

In the instant case, the ALJ properly found that since July 11, 1995, the plaintiff had no disorder or combination of disorders meeting or equaling in severity any of the disorders described in the Listing of Impairments, Subpart P, Appendix 1, Social Security Regulations No. 4. Since at least July 11, 1995, she had not met or equaled Listing Section 12.04,[5] dealing with depression. (Tr. *15)* With regard to her respiratory problems and her diabetes, there was

[5] Under Listing 12.04, an *affective* disorder is "[c]haracterized by a disturbance of mood, accompanied by a full or partial manic or *depressive* syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation." 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.04 (1995). To satisfy the listing, plaintiff must show that she meets the requirements of both subparagraphs A and B of the listing.

> To meet subparagraph A of Listing 12.04 for depression, Lennix must prove: [m]edically documented persistence, either continuous or intermittent, of...[d]epressive syndrome characterized by at least four of the following:
>
> a. Anhedonia or pervasive loss of interest in almost all activities; or
> b. Appetite disturbance with change in weight; or
> c. Sleep disturbance; or
> d. Psychomotor agitation or retardation; or
> e. Decreased energy; or
> f. Feelings of guilt or worthlessness; or
> g. Difficulty concentrating or thinking; or
> h. Thoughts of suicide; or
> I. Hallucinations, delusions or paranoid thinking; . . .

Id. § 12.04(A) (emphasis added).

substantial evidence that these problems were controlled with medication, and that they did not produce, either alone or in combination with any remaining emotional symptoms, any disability that would render her incapable of performing at least her past relevant semi-skilled work. In other words, the Court finds that substantial evidence supports the ALJ's conclusion.

In the instant case, this Court's review of the record reveals the ALJ did "not simply [make] a rote statement" that he had evaluated plaintiff's impairments in combination. Fraga, 810 F.2d at 1305; accord Tamez v. Sullivan, 888 F.2d 334, 336 (5th Cir. 1989). The ALJ clearly evaluated the medical evidence carefully. See Fraga, 810 F.2d at 1305; see Harrell v. Bowen, 862 F.2d 471, 482 (5th Cir. 1988). He differentiated her condition between January 14, 1995 and July 11, 1995, during which time he found she was disabled due to severe depression, and her condition after July 11, 1995, from which time he found that she no longer suffered from a disability, as that term is defined under the Act.

In addition, plaintiff must also meet the identical paragraph B requirements of either Listing 12.04 or 12.06 by showing that her disorder results in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

Id. §§ 12.04(B), 12.06(B). "Marked" means "more than moderate, but less than extreme."

"The Commissioner, rather than the courts, must resolve conflicts in the evidence." Martinez v. Chater, 64 F.3d 172, 174 (5th Cir. 1995). As stated earlier, the Commissioner is entitled to make any finding that is supported by substantial evidence, regardless whether other conclusions are also permissible. See Arkansas v. Oklahoma, 503 U.S. 91 (1992). Despite this Court's limited function, it must scrutinize the record in its entirety to determine the reasonableness of the decision reached and whether substantial evidence exists to support it. Villa, 895 F.2d at 1022; Johnson v. Bowen, 864 F.2d 340, 343-44 (5th Cir. 1988). Any findings of fact by the Commissioner that are supported by substantial evidence are conclusive. Ripley v. Chater, 67 F.3d 552, 555 (5th Cir. 1995). Actually, this Court does not find any significant conflicts in the evidence in this case. After scrutinizing the record in its entirety, the Court finds the ALJ's decision to be entirely reasonable, and finds his finding of facts to be substantially supported by the evidence of record.

CONCLUSION

Substantial evidence in the record supports the ALJ's decision that plaintiff Lennix was entitled to a period of disability insurance benefits commencing on January 13, 1994, and ending on September 30, 1995, "the last day of the second month after the month of the disability cessation." *Supra*, p.2. In addition, substantial evidence in the record supports the ALJ's decision that Lennix has regained a residual functional capacity consistent with at least an ability to perform her past relevant semi-skilled work.

Accordingly, **IT IS ORDERED that** plaintiff's complaint be and is hereby **DISMISSED WITH PREJUDICE.**

New Orleans, Louisiana, this 14th day of October, 1999.

"s/Lansing L. Mitchell"
UNITED STATES SENIOR DISTRICT JUDGE

Item 2

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-31244
Summary Calendar

CECILE A. LENNIX,

Plaintiff-Appellant,

versus

KENNETH S. APFEL, COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 98-CV-2296-LLM

Before HIGGINBOTHAM, DUHE, and WIENER, Circuit Judges. PER CURIAM:[1]

Cecile A. Lennix appeals from the grant of summary judgment f or the Commissioner of Social Se urity in her action for judicial review of the Commissioner's decision denying her application for disability benefits for the period after July 11, 1995. Lennix contends that the Commissioner's decision was not supported by substantial evidence; that the Administrative Law Judge (AU) ignored evidence she submitted; and that she was deprived of due process.

[1] Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.R.47.5.4.

The Commissioner's decision was supported by substantial evidence. *Richardson v. Pe.rales*, 402 U.S. 389, 390 (1971). Lennix's depression (the basis for an award of benefits for the period ending July 11, 1995) had been treated successfully by July 11, 1995, and her medication ultimately was discontinued; her diabetes, diagnosed after July 1995, was under control with medication; and her respiratory condition and associated bloating were under control with medication. Lennix's contention regarding the records she submitted is unavailing –the administrative record; which supported the Commissioner's determination, contained all but one of the documents about which Lennix now complains. That document added no support to Lennix's disability claim. Finally, the Due Process Clause does not require that each and every claim receive a full hearing before a judge at each step of review.

AFFIRMED.